

Is graffiti art? Or is it vandalism? | The Avvo NakedLaw Blog

Friday, December 25 2015, 11:09 AM

Consumer Protection, Crime & Lawsuits, Freedom

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While Shepard Fairey's solo exhibition hung in a New York City gallery, he was charged with vandalism over illegally hung posters in Detroit: the world renowned artist now faces [10 years in prison and fines exceeding \\$10,000](#).

Although the work of Fairey and others, like the England-based artist/activist [Banksy](#), helps [draw tourists](#) to cities around the world, legally, most graffiti is no different from the tags spray painted by teenagers, and the consequences can be just as ugly.

What is graffiti?

Even within the art world, graffiti is often synonymous with tagging. It's true that most tags are hastily scrawled, misspelled words spray-painted on walls and bridges, but elaborate, multicolored tags have also inspired the fonts on many an album cover and billboard.

Regardless of the artistic merit of a piece, permission is the legally defining characteristic of graffiti. Street art created with permission of the property owner is public art. Without permission, it is graffiti, and graffiti is illegal.

"Graffiti, tagging, vandalism—all that is pretty broadly construed," says legal advisor [Bradley Corbett](#) of the Law Office of Bradley Corbett in Southern California. "People are being prosecuted for gang-related cases. Gang-related graffiti is a two-prong problem. One, it promotes violence, and two, it's damaging to property." When gang-related vandalism is involved, extra charges can be brought.

Gray areas

Many forms of [unsanctioned public art](#) are not gang-related, though. "The entire case has to be looked at," says Corbett. "What are the circumstances? Whose property is it? Was permission given? What was the intent?" Artists and law enforcement trying to answer these questions often find themselves operating in a gray zone. Some examples:

Poster*ing*: After a City of Seattle ban on posters was found unconstitutional in Washington State, [the city developed guidelines](#) regulating where and how residents could post. The wheat paste posters favored by graffiti artists are far less common than garage sale signs and concert fliers, so regulations in most communities are written with those things in mind. As long as you're not a high-profile international artist, posters on public property that don't interfere with traffic or others' ability to use the space are infrequently prosecuted.

Yarn bombing: [Yarn bombing](#) has tempted many people to try their hand at unauthorized public art. It might have a cute and cozy image, but yarn bombing has the potential to be one of the more damaging forms of graffiti. When well-known yarn artist Olek crocheted some of the pieces in Cancun's Underwater Museum without permission last year, [the museum pressed charges](#). Although intended as an environmentalist statement, Olek's work may have negatively impacted the habitat. In general, biodegradable yarn can disintegrate in a matter of weeks, leaving bits of fabric all around the "bombed" object; stronger yarns may last a very long time, and left on trees (a popular yarn-bombing target) can attract pests, encourage mold growth, and even restrict a tree's ability to grow. As a result, [yarn bombing is considered both vandalism and littering](#).

Performance art: Public performance art can be anything from busking to a zombie flash mob. "That's clearly free speech. You can go to a public space and dance or have a flash mob. I've never seen any of those prosecuted. There are times that police officers have the right to act, though, for example if there's a potential to hinder public transportation," says Corbett.

When money changes hands, as in busking, there are often regulations. Noncompliant performers are more likely to be treated like panhandlers and told to move along than to be charged with a crime. Not everyone

believes that [requiring busking permits](#) is legal, but no matter how strongly you believe yourself to be in compliance with the law, Corbett advises, “Quickly accommodate police when they come. File a suit later but don’t litigate with police.”

Video projections: Video projects are by their very nature ephemeral, but property owners and/or law enforcement will usually try to stop unsanctioned projections. “Law enforcement are very creative in finding a violation to stop someone,” says Corbett. In New York City, members of the politically motivated Illuminated Art Collective were arrested for “illegal posting of advertisements.” Their [case was thrown out](#) for failing to meet the definition of the charge, but charges of loitering and trespassing might have stuck. Depending on the nature of the art, artists could be subject to regulations related to public protests.

Does a graffiti artist have rights?

No matter what form artistic expression takes, the only way to be completely legal is to obtain the permission of the property owner. But graffiti has resulted in some interesting [legal tensions](#). Although property owners have a right (and in some communities a requirement) to remove or destroy graffiti, the artist may yet have intellectual property rights regarding the reproduction of their work. Likewise, performance artists may also have some rights related to recordings of their performances. It’s even conceivable that a graffiti artist could become both a plaintiff and a defendant in cases related to the same piece of art.

Penalties

Generally, graffiti will be [subject to local laws](#), which can vary widely. In California, for instance, the assumption that graffiti is the work of teenagers has resulted in an additional penalty of a one-year driver’s license suspension.

“In those cases where people have a political motivation, you are really talking about First Amendment rights. There are the competing interests of privacy, property rights, and free speech. If you’re a property owner and if you don’t want it on there, it’s still vandalism even if it’s art,” says Corbett.

Corbett says that penalties for vandalism are linked to the replacement cost of the damages. The exception is in any case involving public transportation, which can result in FBI action for something as innocuous as waving a laser pointer. In a post-9/11 world, “When you interfere with public transportation, you’re playing with fire,” warns Corbett.

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